



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 10, 2000

The Honorable Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
U. S. House of Representatives
H2-362 Ford House Office Building
Washington, DC 20515

Dear Chairman Canady:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding the constitutional implications of the potential actions discussed in the *NPRM*. I appreciate your invitation for the Commission to provide materials it believes would be useful to the Subcommittee in considering these issues. We have not prepared a cost-benefit analysis related to this issue. Moreover, given the current status of this proceeding, it would be premature for a Commission representative to testify at a hearing before the Subcommittee. However, my staff would be pleased to provide you and your staff with a briefing regarding the issues raised by the *NPRM*.

The *NPRM* represents one step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, the *NPRM* addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, such as apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities.

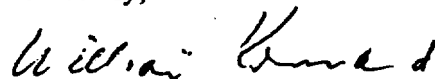
The purpose of this proceeding is to explore broadly which actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (ILECs). The item seeks comment on a wide range of potential Commission actions, in most instances without reaching any specific conclusions. For example, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners who allow one or more telecommunications carriers access to facilities that they control make

comparable access available to other carriers on a nondiscriminatory basis. The item also requests comment on whether the Commission can and should extend to providers of telecommunications service rules prohibiting restrictions on the placement of antennas used for over-the-air reception similar to those adopted for video programming services under section 207 of the 1996 Telecommunications Act. In addition, the item proposes and seeks comment on potential obligations on ILECs and other public utilities to permit access to their in-building facilities under certain provisions of the Communications Act of 1934. Finally, the *NPRM* seeks comment on whether telecommunications providers, with or without market power, should be prohibited from entering into exclusive contracts with owners of multi-tenant dwelling buildings. You cite some of these issues in your letter, which we will place in the record of this proceeding.

As you note in your letter, the Commission has not reached any conclusions regarding the matters discussed in the *NPRM*. The Commission currently is reviewing nearly 1000 comments that were filed on the *NPRM* and a related *Notice of Inquiry* by telecommunications companies, electric utilities, building owners, and State and local governments, including a number of comments that address the constitutional issues. As your letter indicates, certain potential actions discussed in the *NPRM* raise important takings issues. The Commission has not yet resolved the *NPRM*, but let me assure you that we are committed to ensuring that any requirements we adopt comport with the Fifth Amendment. To this end, our General Counsel's office is working closely with other Commission staff to evaluate carefully the constitutional issues raised by the *NPRM*, including any potential for government liability under the "just compensation" provision of the Takings Clause. I want to assure you that our staff will be considering carefully these important and complex constitutional issues, as well as other legal and policy issues raised by the *NPRM*, before it makes its recommendations to the Commission for its consideration.

I appreciate your interest and participation in this proceeding, and look forward to working with you in examining this issue. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "William E. Kennard". The signature is fluid and cursive, with the first name "William" being more prominent.

William E. Kennard
Chairman

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November 17, 1999

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The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Kennard:

I have recently become aware of the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM), WT Docket No. 99-217, CC Docket No. 96-98. The NPRM proposes, among other things: (1) to require owners of all "multiple tenant environments" to provide access to their premises on a non-discriminatory basis to any telecommunications provider that seeks such access, subject to space and safety constraints; (2) to prohibit restrictions that prevent tenants in "multiple tenant environments" from installing antennas for non-video services, extending an earlier, similar prohibition with respect to antennas for video services; and (3) to require local exchange companies ("LECs") and other public utilities to make their in-building facilities available to all cable companies and other telecommunications providers, regardless of the nature or extent of the rights of access of the LEC's and public utilities.

I understand and appreciate that the Commission has not taken action with respect to the proposals contained in the NPRM and that individual commissioners have expressed concern as to constitutional implications of the NPRM under the Fifth Amendment's Takings Clause. As Chairman of the Constitution Subcommittee of the House Judiciary Committee, I share the concern expressed by members of the Commission regarding the constitutionality of the NPRM.

I am currently considering conducting a hearing on the constitutional implications of the NPRM early next year. As an initial step, I invite the Commission to provide us with any materials or information that it believes would be useful to the Subcommittee in considering and reviewing the constitutional issues posed by the

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LAW OFFICES LLP

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The Honorable William E. Kennard

November 17, 1999

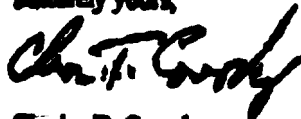
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NPRM. We are particularly interested in any cost-benefit analysis that the Commission may wish to share with the Subcommittee comparing the extent of the problem sought to be corrected by the NPRM with the potential liability created by the "just compensation" provision of the Takings Clause. I emphasize that my interest in these issues does not imply that the Commission will not consider carefully the constitutional and statutory authority concerns that have been expressed regarding the NPRM.

The Subcommittee will, of course, notify you of any hearing to be held and, in the event of such hearing, would invite the Commission to present testimony.

Thank you for your assistance.

Sincerely yours,



Charles T. Canedy

Chairman

Subcommittee on the Constitution